Supreme Court of the United States
OCTOBER TERM, 1942

NO. . . . .

MORRIS I. JAYNE; LELIA G. JAYNE; and LELIA JAYNE, Guardian of the Person and Estate of Morris Ingalls Jayne, Incompetent,
Petitioners,

VERSUS

NATIONAL LIFE INSURANCE COMPANY, a Corporation,
Respondent.

BRIEF IN SUPPORT OF PETITION

I. STATEMENT OF THE CASE

This has already been sufficiently stated in the preceding Petition under the heading "Summary Statement," which is hereby adopted and made a part of this brief.

II. SPECIFICATION OF ERRORS

1. The court erred in holding that facts necessarily inhering in a prior adjudication can be relitigated, and the judgment thus collaterally attacked.

2. The court erred in refusing to give effect to controlling admissions of fact by respondent contained in its brief.

3. The court erred in refusing to apply the definition of "total permanent disability" previously adopted and announced by the Supreme Court of Oklahoma.

4. The court erred in refusing to consider, or apply, the Oklahoma Statute of Limitations.

III. ARGUMENT

Point 1.

Where there has been a judicial determination of a continuing status of an individual by a state court of competent and exclusive jurisdiction, in which determination and in which status there is inherent the establishment of certain controlling facts, respondent could not be heard, or permitted, to dispute those facts, nor could another court be permitted to readjudicate them, where, under the local law, the previous adjudication is conclusive until revoked by judicial action of that court.

(a) In Oklahoma, insanity once established, is held conclusively established, both originally and as to continuity, until there has been judicial restoration.

In *Groenewold* v. *Groenewold*, decided Nov. 4, 1941 (not yet officially reported, 12 Okla. Bar Journal, No. 45, p. 1605), the Supreme Court of Oklahoma said:

> "Indiana and Missouri hold in line with our views herein expressed that a judicial determination of insanity is conclusive until a direct proceeding is prosecuted, resulting in a contrary adjudication. *Pavey* v. *Wintrode*, 87 Ind. 379; *Kiehne* v. *Wessell*, 53 Mo. App. 667; *Cockrill* v. *Cockrill*, 79 Fed. 143; *Hamilton* v. *Henderson et al.*, 232 Mo. App. 1234, 117 S. W. (2d) 379; 32 C. J. §228, at p. 647, and the cases therein cited.

See, also, *Anderson* v. *State*, 54 Ariz. 387, 96 Pac. (2d) 281, 126 A. L. R. 501."

This case is pending on rehearing, with denial of rehearing expected at an early date (R. 33).

In the opinion of the court below, it is squarely recognized (R. 23) that this is the law in Oklahoma, but the court then creates a conflict on the face of its own opinion by holding to the contrary, saying (R. 25) that the adjudication amounts only to a determination of want of mental capacity "at the time of the adjudication", and saying (R. 25) that the adjudication can be at most only "presumptive evidence" of subsequent insanity, and holding further that evidence may be offered "to overcome the presumption flowing from the adjudication, and to establish that insured was sane on and after June 18, 1936". Such is surely contrary to the letter and spirit of the rule announced in *Erie Railway Company* v. *Tompkins*, 304 U. S. 64.

(b) An adjudication of incompetency necessarily determines: (1) Insanity, (2) lunacy, (3) unsoundness of mind, (4) that insured was incapable of understanding and acting with discretion in the ordinary affairs of life, (5) that he was deranged mentally, (6) that he was incapable of taking care of himself and managing his property, (7) that he was incapable of contracting, (8) that he was incompetent to testify, (9) that he could make no conveyance, (10) that he could designate no power, and (11) that he could not waive any right.

Article 7, §13, of the Constitution of Oklahoma, reads in part:

> "The County Court shall have the general jurisdiction of a Probate Court. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; * * * transact all business appertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the sale, settlement, partition, and distribution of the estates thereof."

See, also, Oklahoma Statutes, 1941, Title 58, §851 (quoted in the foregoing petition); Oklahoma Statutes, 1941, Title 58, §852 (quoted in the foregoing petition); Oklahoma Statutes, 1941, Title 35, §94 (quoted in the foregoing petition); Oklahoma Statutes, 1941, Title 15, §24 (quoted in the foregoing petition); Oklahoma Statutes, 1941, Title 12, §385; Oklahoma Statutes, 1941, Title 12, §1283; Oklahoma Statutes, 1941, Title 15, §12; Oklahoma Statutes, 1941, Title 15, §11; Oklahoma Statutes, 1941, Title 15, §16; *Oklahoma Natural Gas Corporation* v. *Lay,* 175 Okla. 75, 51 Pac. (2d) 580.

(c) Any attempt in a judicial proceeding to avoid, defeat, or evade a judgment, or to deny its force and effect, other than by a method expressly provided by law for the purpose of attacking such judgment directly, is a collateral attack and will not be permitted.

Covell v. *Heyman,* 111 U. S. 176; *Manuel* v. *Kidd,* 126 Okla. 71, 258 Pac. 732; *Chaloner* v. *Sherman* (C. C. A. 2),

215 Fed. 867 (aff. 242 U. S. 455); *Maryland Casualty Co.* v. *Waldrep* (C. C. A. 10), 126 Fed. (2d) 555.

Judgments and decrees of probate courts are judgments *in rem*. A judgment *in rem* is an adjudication pronounced upon the status of a particular thing, or subject-matter, by a competent tribunal. It has the effect of binding all persons having interests, whether they be joined as parties by specific name or not. Such a judgment is conclusive and binding upon all the world, including, of course, all persons who may have or claim any right or interest. It is not open to collateral impeachment and may be pleaded in bar, operating as an establishment in any subsequent action in respect of the points or questions adjudicated. *Christianson* v. *King County*, 239 U. S. 356; *Stiller* v. *A., T. & S. F. Ry. Co.*, 34 Okla. 45, 124 Pac. 595; *Flanigan* v. *Security-First Natl. Bank* (D. C., Cal.), 41 Fed. Supp. 77.

In *Pennoyer* v. *Neff*, 95 U. S. 679, this Court recognizes the authority of the states to provide for actions *in rem* to determine civil status.

It has been definitely established by the cited decision of the Supreme Court of Oklahoma and the statutes herein quoted (particularly Oklahoma Statutes, 1941, Title 15, §24), that regardless of what the law may be in other states, or under different statutes, this State has exercised its sovereign prerogative of determining that an adjudication of incompetency is in a proceeding *in rem* and conclusive wherever it is shown or made to appear.

While the court below recognizes by express words that this case is a "collateral proceeding" (R. 24), and though petitioners presented to the court fully and carefully their theory and contention that this proceeding constitutes a collateral attack upon a state court judgment, there is no discussion of this important question in the opinion.

On this point, therefore, the decision of the court below is in conflict with controlling Oklahoma decisions, with prior decisions of this Court, and with those of other Circuit Courts of Appeal.

Point 2.

The court, as well as the party making them, is bound by admissions of fact made during the course of judicial proceedings.

In its brief in the Circuit Court of Appeals, respondent made the following admissions which we have collected and set out here with appropriate references to the record:

> "Although it is not disclosed by the complaint, it is nevertheless true that in 1930 Jayne was insane, * * *" (R. 20); "Morris I. Jayne, the insured, is a legal incompetent. He was adjudged such in 1930 and there have been no proceedings taken to restore him to competency" (R. 19); "When Mr. Jayne was adjudged an incompetent in 1930, the appellant readily concedes that he was likewise totally and permanently disabled, and that he was entitled to the disability benefits" (R. 19); "The appellant readily admits that Mr. Jayne is now, and has been for a number of years, legally adjudged an incompetent" (R. 19); "He was adjudged an incompetent and such adjudication was proper at the time

it was made. The adjudication of incompetency continues until by proper proceedings there has been a restoration of legal competency" (R. 19); "The appellant readily concedes that insanity is a physical disability and if an insured is insane he, or his guardian, is entitled to the permanent and total disability benefits provided in a rider such as is involved herein" (R. 19); "Again we repeat that if Jayne were insane, he would be entitled to disability benefits" (R. 20).

Though these admissions were urged upon the court below, both in the original brief of petitioners and in their Petition for Rehearing, no mention of them is made in the opinion, the court having apparently completely rejected them, and having refused entirely to give them the effect, which, under the law, they are required to be given. In the next to the last sentence in the opinion, as corrected (R. 44), the court holds that the allegations of the Complaint "preclude us from holding, as a matter of law, that the civil disabilities effect total and permanent disability of the insured." Under the circumstances in this case, as we will show hereafter, this statement is unsound, as a matter of law in Oklahoma, but in any event, in light of the above-stated admissions of fact.

The admission by respondent that "insanity is disability" is an admission of an ultimate fact by which the court must be bound. As has been well said by the Supreme Court of Oklahoma in more than one case: "It is fundamental that admissions of fact in pleadings are judicially established."

See, *Rider* v. *State*, 170 Okla. 630, 41 Pac. (2d) 484.

We think this is the universal rule, and that the demand stated in the Complaint is limited and amended by the admissions, so that the court below was not at liberty to ignore and refuse to give effect to them. It had no more right to reject those admissions and disregard them and their effect than it would have had to disregard a plain allegation of the fact actually written into the pleading or a finding of a jury upon the issue properly submitted to it. See, also, *Scott* v. *Commissioner of Internal Revenue* (C. C. A. 8), 117 Fed. (2d) 36.

While the above cited cases have particular reference to admissions in "pleadings", there is no logical basis for making a distinction between an admission in a pleading and an admission in a brief in the Appellate Court, particularly where those admissions contradict allegations of the Complaint and are clear, unequivocal, and oft-repeated, and where they support the conclusion reached by the trial court. An admission in a brief or oral argument to an Appellate Court is of at least as great, if not greater, solemnity than one contained in a "pleading".

Where an admission of fact is made in the course of judicial proceedings contrary to allegations of fact made by the pleader in the pleading stating his demand, such pleading is immediately and effectively limited and amended by the admission made, and cognizance must be taken of the admitted fact at every subsequent stage of the proceeding just as if the admitted fact were expressly stated in the pleading under consideration. The philosophy underlying the long-established practice of accepting facts

admitted as facts pleaded and proved, is well stated in *Oscanyan* v. *Winchester Repeating Arms Company*, 103 U. S. 261. It is also evidenced in the recently adopted Federal Rules of Civil Procedure where in many instances, rulings, judgments, and decrees are to be predicated upon such admissions.

See, also:

Young & Van Supply Company v. *Gulf, F. & A. Ry. Co.* (C. C. A. 5), 5 Fed. (2d) 421;

Wolfe v. *International Re-Insurance Corp.* (C. C. A. 2), 73 Fed. (2d) 267.

If, as we think, the court below was required to give effect to the admissions by respondent, then we believe that it has so far departed from the accepted and usual course of judicial proceedings that an exercise of this Court's power of supervision is called for.

Point 3.

The facts conclusively appearing in this case by reason of the adjudication of insanity, in themselves, and also when taken in connection with admissions by respondent, wholly meet the requirements of proof of total permanent disability as that term is defined by the Supreme Court of Oklahoma and other courts throughout the land.

In the case of *New York Life Insurance Company* v. *Razzook*, 178 Okla. 57, 61 Pac. (2d) 686, the Supreme Court of Oklahoma defines "total permanent disability" under a clause almost identical with the one here in suit, and under the definition there adopted, there could be no dispute

but that the insured here is totally and permanently disabled. The court said:

> "We believe the above cases are sufficient to show what is required for total disability in this case."

See, also:

Metropolitan Life Ins. Co. v. *Richter,* 173 Okla. 489, 49 Pac. (2d) 94;

Metropolitan Life Ins. Co. v. *Bovello* (C. A., D. C.), 12 Fed. (2d) 810;

United States Fid. & Guar. Co. v. *McCarthy* (C. C. A. 8), 50 Fed. (2d) 2.

In the case of *Forbes* v. *Welch,* 286 Fed. 765, the Court of Appeals for the District of Columbia, while holding that it had no power to review the action of the Director of the Veterans' Administration, expressed its own opinion in the following words:

> "By virtue of the decree, the ward is restrained from pursuing any gainful occupation. His disability, regardless of the degree of insanity, or mental or physical disqualification, is complete. It is therefore difficult to understand just how, in the face of the adjudication of lunacy, the Director could justly find other than total disability."

The decision of the court below is thus in conflict on this point with controlling decisions of the Supreme Court of Oklahoma, and with decisions of other Circuit Courts of Appeal as above indicated.

Point 4.

The Oklahoma Statute of Limitations bars recovery by Respondent.

This was asserted in the Motion to Dismiss (R. 11), was not passed upon by the trial court since having decided the case for petitioners on other grounds, it was not deemed necessary (R. 12), but the issue was tendered to the Circuit Court of Appeals both in the brief of petitioners and in the Petition for Rehearing. The issue was ignored.

An analysis of the Complaint (R. 4-10) will disclose that the gravamen of the action must be found in alleged fraudulent conduct of petitioners. The fraud, if committed at all, was obviously committed more than two years before this action was instituted. There is no allegation of the commission of any fraud within the two-year period prior to the institution of this suit.

Oklahoma Statutes, 1941, Title 12, §95, reads in part:

> "Civil actions, other than for the recovery of real property, can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:
>
> "* * *
>
> "Third: Within two years: * * * An action for relief on the ground of fraud—the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud."

This statute was adopted from Kansas and before its adoption, it was held by the Supreme Court of Kansas, in *Myers* v. *Center*, 47 Kan. 324, 27 Pac. 978, that if plaintiff

relies upon nondiscovery of the fraud to toll the statute, it must be specially and expressly pleaded in the petition that he did not discover the fraud until within the two-year period, and the petition is demurrable if he fails to do so.

To the same effect is *Stockwell* v. *Hamm,* 154 Okla. 227, 7 Pac. (2d) 461.

The petition in this case is devoid of any allegation that the alleged fraud had not been discovered until within two years prior to the institution of the action. On the contrary, we think it appears conclusively that it was so discovered, since the rule is that the knowledge of the fraud necessary to start the statute running need not be actual knowledge, but may be constructive knowledge. In this connection, the courts have held in substance that means of knowledge is knowledge.

See:

Caraway v. *Overholser,* 182 Okla. 357, 77 Pac. (2d) 688;

Farmer v. *Standeven* (C. C. A. 10), 93 Fed. (2d) 959.

By virtue of the provisions of the policy permitting the Company to require submission of satisfactory proof of disability once a year, and permitting the Company to have the insured examined once a year by a medical examiner designated by the Company, the means of knowledge were at hand at all times (R. 9).

IV. CONCLUSION

Petitioners in no wise seek to preclude the exercise by respondent of the appropriate remedy, but petitioners objected, and now object, to the exercise of a remedy by respondent which it does not in any wise have the right to exercise. Respondent should not be placed in a more favorable position than other litigants, and rights of petitioners, guardian and insured, favored persons in the eyes of the law usually, are entitled to the same measure of protection in this case against an inappropriate remedy as they would be in any other case. Respondent, therefore, should be relegated to its appropriate remedy by a direct attack upon the status of incompetency by a proceeding to dissolve the judgment, either under the Oklahoma Statutes, or by a suit in equity for such purpose.

It is respectfully submitted that a Writ of Certiorari should be granted, that the decision of the Circuit Court of Appeals for the Tenth Circuit should be reversed, and the judgment of the District Court should be reinstated and affirmed.

John V. Cantrell

JOHN H. CANTRELL,
Counsel for Petitioners.

Dated: Oklahoma City, Oklahoma,
December 30, 1942.